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September 22, 2003

VIA ELECTRONIC FILING

Marlene Dortch, Secretary,
Federal Communications Commission
445 12th Street SW
Room TWB-204
Washington, DC 20554

Re: Ex Parte Notification: WC Docket 03-167, Application By SBC Communications Inc. For Authorization Under Section 271 of The Communications Act to Provide In-Region, Inter LATA Service in the States of Illinois, Ohio, Indiana and Wisconsin

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's Rules, Mpower Communications Corp. ("Mpower") submits this notice, in the above-captioned proceeding, of a telephonic *ex parte* meeting attended by Scott Sarem, Vice President, Strategic Relations, Mpower; Pat Wilson, Director, LEC Relations, Mpower; Ross Buntrock, Kelley Drye & Warren, LLP, counsel to Mpower and Pamela Arluck, Jeremy Miller, Jeffrey Tignor, and Rodney McDonald of the Federal Communications Commission, Wireline Competition Bureau. The purpose of the meeting was to follow up on the written *ex parte* presentation submitted in this docket by Mpower on September 16, 2002.

Specifically, Mpower explained that from April 2002 through August 2003, which includes the March through July 2003 period under consideration in the instant application, SBC has improperly billed Mpower for trip charges on approximately 14,000 trouble tickets in the state of Illinois. SBC has levied these improper trip charges upon Mpower despite the fact that SBC, to date, has failed to demonstrate that Mpower was the party that opened the tickets, that the troubles were on Mpower's side of the network, or that the circuits associated with the trouble tickets were associated with loops leased from SBC by Mpower. As of today, approximately \$1.2 million associated with SBC's improper billing of trip charges to Mpower in the state of Illinois remains in dispute.

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Mpower explained to the Commission attendees that until September 12, Mpower and SBC were on the cusp of settling the dispute pursuant to a methodology proposed and agreed upon by SBC executives.¹ Specifically, SBC Vice President Larry Cooper, in a tacit acknowledgment of the serious issues associated with SBC's wholesale billing system in Illinois, proposed that the parties resolve the issues associated with the improper trip charges by examining data for 2 months of the 17 months at issue (June and July 2002) and applying the results of the investigation to the entire 17 month period.² As Mpower explained in its September 16 *ex parte*, SBC executives agreed that the June and July 2002 data would best represent the nature of the disputes for the entire 17 month period and should be applied to the entire disputed amount. However, once the results of the investigation (conducted pursuant to the ground rules agreed upon by SBC) demonstrated that 93% of the trip charges billed to Mpower by SBC were incorrect, SBC asked to change the rules of audit. Specifically, SBC asked Mpower to agree to "re-do" the audit based on a different sample, presumably one that might be more favorable to SBC.

Through its actions here, Mpower argued that SBC has effectively demonstrated that it is incapable of rendering accurate wholesale bills to Mpower. Mpower urged the Commission to deny the Application for the state of Illinois. In accordance with Rule 1.1206 of the Commission's rules, one electronic copy of this notice and the attached materials are being provided for inclusion in the above referenced docket.

Respectfully submitted,



Ross A. Buntrock

cc: Chairman Powell
Commissioner Abernathy
Commissioner Adelstein
Commissioner Copps
Commissioner Martin
Christopher Libertelli

¹ Pursuant to the ground rules, the parties agreed to parse data for 75 of the 684 trouble tickets opened for June and July 2002. Mpower agreed to provide SBC with 75 numbers ranging from 2 to 684 to correlate to the "line item (Trip Ticket dispute) on the master dispute spreadsheet" compiled by SBC. The carriers further agreed that "the results from the 75 tickets will be applied across the entire [sic] based to resolve the Mid-West Trip Charge dispute." See Sept. 16 Ex Parte, Attachment 1.

² SBC's Larry Cooper specifically agreed that data for June and July 2002 would be the most useful, representative, pure and readily accessible data to review in connection with these disputes.

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Matthew Brill
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John Stanley
Jeremy Miller
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